Learned counsel for the appellant did not appear to wish to pursue the other point he had raised in the court below i.e. that the cause of action accrued from the date of the notice, that is August 13, 1975 so that in filing the suit on September 19, 1975 he had commenced action well within time. Even if he had been unaware on May 14, 1969 that the contract of sale had been completed on that day, he had certainly found out by September 5, 1970 that the land had been sold, so that time would begin to run from the date the alleged fraud came to his notice (see *Gibbs* v. *Guild*[5]). Therefore, even if there had been fraud on the part of the Official Assignee the appellant would be clearly out of time.

The appeal is therefore dismissed with costs.

Lee Hun Hoe C.J. (Borneo) concurred.

Appeal dismissed.

Solicitors: *Balendran & Chong; Nik Hussain, Ibrahim, Tan & Abdullah.*

LIM HANG SEOH v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya) and Chang Min Tat F.J.) October 1 and 4, 1977]

[Kuala Lumpur — F.C. Criminal Appeal No. 54 of 1977]

Criminal Law and Procedure — Sentence — Boy of 14 years found guilty of offences of possession of pistol and ammunition — Security offence — Mandatory sentence — Essential (Security Cases) Regulations 1975 — Internal Security Act, 1960, s. 57.

In this case the appellant, a boy of 14 years had been found guilty of the offence of possession of a pistol and ammunition and had been sentenced to death under section 57 of the Internal Security Act. He appealed to the Federal Court.

Held, dismissing the appeal: (1) the learned trial judge was right in concluding that the appellant knew that the bag found in his possession contained a pistol and ammunition;

(2) in view of the provisions of regulation 3 of the Essential (Security Cases) Regulations, 1957, there was only one sentence authorised by law for each of the offences and that is the sentence of death.

The following cases were cited in argument: *Tai Chai Keh* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 86, 88-9; *Chye Chong* v. *Public Prosecutor* [1975] 1 M.L.J. 214; *Public Prosecutor* v. *Sivasupramaniam* [1969] 2 M.L.J. 86, 88-89; *R.* v. *Chief Immigration Officer* [1976] 3 All E.R. 843, 847f.; *R.* v. *Secretary of State* [1976] 2 All E.R. 1081, 1083 *b*1.

FEDERAL COURT.

Karpal Singh (*S.T. Lee* with him) for the appellant.

Faidz bin Mohamad Darus (Deputy Public Prosecutor) for the respondent.

Suffian L.P. (delivering the judgment of the Court): We dismissed this appeal. There were two principal points involved. First, was the accused aware of the contents of the bag? The appellant handled this bag on four separate occasions not once, and we have seen the bag and other exhibits. In view of the evidence we are of the opinion that the learned trial judge was right in concluding that the appellant knew that the bag contained a pistol and ammunition. Accordingly we dismissed the appeal against the conviction.

The second question related to the sentence. We considered Mr. Karpal Singh's submission and that of Encik Faidz and the written law cited. We are of the opinion that in view of the words "the Juvenile Courts Act, 1947, shall not apply to such person" in regulation 3(3) of the Essential (Security Cases) Regulations, 1975, there is only one sentence authorised by law for each of these offences and that is the sentence of death, despite the fact that the accused was only a boy of 14. We therefore affirm the sentenced passed on him.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

PUBLIC PROSECUTOR v. TEH CHENG POH

[A.Cr.J. (Arulanandom J.) December 15, 1976]

[Penang — Miscellaneous Criminal Application No. 1 of 1976]

Internal Security — Offence — Decision to prosecute — Charge under Internal Security Act — Internal Security Act 1960, s. 57(1)(a) — Federal Constitution Art. 8(1).

Criminal Law and Procedure — Double jeopardy.

In this case the accused was charged with the offences of possession of a firearm and of ammunition punishable under section 57 of the Internal Security Act, 1960. At the trial certain preliminary objections were raised. It was argued (1) that the circumstances under which the accused was tried on the charge under the Internal Security Act have led to an infringement of Article 8(1) of the Federal Constitution which guarantees equal protection under the law; (2) that there had been no promulgation as to security areas under the Internal Security Act; (3) that this was a security matter and that the Internal Security Act was intended for combating political subversion and that security areas were intended to be limited areas in the Federation and not the whole of the Federation; (4) that as the accused had also been charged in the Magistrate's court for robbery and a preliminary inquiry was pending he could not be charged in the High Court for the offence, as this would mean he would be in jeopardy twice.

Held: (1) it is clear that when a person is charged under the Internal Security Act on a security offence there is no violation of article 8 of the Federal Constitution. It is not for the court to enquire why the Public Prosecutor had declared an offence a security offence;

(2) a person has to be convicted or acquitted before he could be said to be in double jeopardy.

Cases referred to:-

(1) *Public Prosecutor* v. *Khong Teng Khen & Anor.* [1976] 2 M.L.J. 166.

(2) *N. Madhavan* v. *Government of Malaysia* [1975] 2 M.L.J. 286.

(3) *Public Prosecutor* v. *Soon Seng Sia* (Penang — Criminal Trials Nos. 5, 6 & 7 of 1976, unreported).

(4) *Kathi Raning Rawat* v. *State of Saurashtra* A.I.R. 1952 S.C. 123.

(5) *Long bin Samat & Ors.* v. *Public Prosecutor* [1974] 2 M.L.J. 152, 158.

CRIMINAL APPLICATION.

Ghazi bin Ishak (Deputy Public Prosecutor) for the Public Prosecutor.

Karpal Singh for the accused.

Arulanandom J.: In this case the accused was charged as follows: —

"First Charge:

That you on the 13th day of January, 1976, at about 12.35 p.m., at the junction of Kampar Road and Ayer Itam Road, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung *vide Federal Gazette* No. P.U. 148/169, without lawful excuse did have in your possession a firearm, to wit, a home-made .38 Revolver, and thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

Second Charge:

That you on the same date, time and place, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung *vide Federal Gazette* No. P.U. 148/69, without lawful excuse did have in your possession ammunitions, to wit, 5 rounds of .38 Special Revolver bullets, and thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960."

The case was fixed for hearing on March 4, 1976. The necessary consent of the Public Prosecutor was also filed under section 80 of the Internal Security Act, 1960. Soon after the accused was committed for trial he applied under Miscellaneous Criminal Application No. 4 of 1976 by way of Motion for the following Orders: —

(1) The Honourable Court has no jurisdiction to try the applicant under the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 as the said Regulations are purportedly made under section 2 of the Emergency (Essential Powers) Ordinance No. 1 of 1969 which is null and void and of no effect. The said Regulations are accordingly void and inoperative;

(2) The Honourable Court cannot legally try the applicant until there is a preliminary enquiry before a Magistrate in accordance with the provisions of Chapter XVII of the Criminal Procedure Code (FMS 6);

(3) Any further or other order deemed fit by Honourable Court.

On February 28, 1976, the said Notice of Motion was filed and fixed for hearing on the same date. After considering all the arguments, the court overruled the preliminary objections to the jurisdiction of this court and the court held that the Emergency (Essential Powers) Ordinance, 1969 (No. 1 of 1969) was promulgated under the provisions of Article 150(2) of the Federal Constitution, and by reason of that the Essential (Security Cases) Regulations, 1975, and the Essential (Security Cases) (Amendment) Regulations, 1975 were not unconstitutional and not invalid.

The Miscellaneous Criminal Application No. 4 of 1976 was dismissed and the court held that the accused's trial under the said regulations was constitutional and lawful.

When the case came up for hearing again on June 8, 1976, counsel for the accused informed the court that certain questions regarding the Security Cases were pending before the Federal Court and requested for an adjournment. It was confirmed with the Federal Court that Wan Hamzah J. had referred certain questions in the matter where an accused was also charged for offences under section 57(1)(a) & (b) of the Internal Security Act, 1960. In view of this reference, the matter was adjourned, and in *Public Prosecutor* v. *Khong Teng Khen & Anor.*,[1] the Federal Court, by a majority, gave the following answers to the questions raised. Suffian L.P., in giving the majority decision said as follows: —

"I would therefore answer the question posed by the learned judge as follows:

The Essential (Security Cases) Regulations, 1975, and the Essential (Security Cases) (Amendment) Regulation, 1975, are valid:

(a) they are valid whether or not made when Parliament is sitting;

(b) by virtue of subsection (4) of section 2 of the Ordinance, the regulations are valid notwithstanding that they are inconsistent with the constitution, but in fact the regulations enumerated by Mr. Wilson are not inconsistent with the constitution;

(c) it is lawful for His Majesty to delegate under section 2 of the Ordinance power to himself to make regulations inconsistent with the constitution;

(d) the regulations do not have to comply with Article 149, as they are not made under the authority of that article but under the authority of Article 150;

(e) Ordinance 1 has been properly and validly promulgated under clause (2) of the Article 150 for the reason given in *N. Madhavan Nair* v. *Government of Malaysia*[2];

(f) the regulations are not *ultra vires* section 2 of Ordinance 1."

The matter was then finally put down for hearing before me on November 16, 1976. At the outset counsel for the accused wished to raise some preliminary objections. The objections were as follows: —

Firstly, that the circumstances under which accused was being tried has led to an infringement of Article 8(1) of the Constitution which guarantees equal protection under the law. He submitted that there were three laws under which a person could be charged when found with a revolver or committing an offence while armed, namely, the Penal Code, the Arms Act and the Internal Security Act.

He submitted that in charging the accused under the Internal Security Act he was not being given equal protection before the law. As the different Acts carried different punishments, counsel argued that there was no equal protection.

Secondly, that there had been no promulgation as to Security Areas under the revised Internal Security Act of 1972, as under this Act promulgation by virtue of section 47 must be made under Part III of the Act. Counsel relied on Harun J.'s reasons for holding that Jinjang South was not a security area in a recent case.

Thirdly, counsel urged that this was a security matter and that the Internal Security Act was intended for combating political subversion and that security areas were intended to be limited areas in the Federation and not the whole of the Federation.

Fourthly, counsel argued that as the accused had also been charged in the Magistrate's Court for robbery and a preliminary enquiry was pending, he could not be charged in the High Court for this offence, as this would mean that he would be in jeopardy twice.

I overruled all the objections. As far as the first objection is concerned, in *Public Prosecutor* v. *Khong Teng Khen & Anor., supra,* the same arguments as those of counsel for the accused were advanced in the Federal Court about Article 8 of the Federal Constitution and Suffian L.P. in his judgment says as follows:—

"Article 8 guarantees to all persons equality before the law and its equal protection. Regulations 6, 7, 13, 19, 20 and 21 prescribe rules of procedure and evidence different from those applicable under the Criminal Procedure Code and the Evidence Act and to that extent they are discriminatory, but as between all persons charged with security offences within the meaning of regulation 2(1) they are not discriminatory and do not therefore offend against Article 8. It would have been different if the regulations provide that some persons charged with security offences are to be subject to one set of rules and others charged with similiar offences to another set of rules.

The principle underlying Article 8 is that a law must operate alike on all persons *under like circumstances,* not simply that it must operate alike on all persons in any circumstance, nor that it 'must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons... for the purpose of legislation', *Kedar Nath* v. *State of West Bengal* A.I.R. 1953 S.C. 404, 406. In my opinion, the law may classify persons into children, juveniles and adults, and provide different criteria for determining their criminal liability or the mode of trying them or punishing them if found guilty; the law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories and provide that some offences be triable in a magistrate's court, others in a sessions court, and yet others in the high court; the law may provide that certain offences be triable even in a military court; fiscal law may divide a town into different areas and provide that ratepayers in one area pay a higher or lower rate than those of another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate Article 8. All that Article 8 guarantees is that a person in one class should be treated the same as another person in the same class, so that a juvenile must be tried like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and a millionaire the same income tax as another millionaire, and so on.

It will be recalled that the definition of 'security offence' by regulation 2(1) of the 1975 regulations empowers the Attorney-General to certify that an offence against any other written law affects the security of the Federation, in which event the person accused of that offence becomes liable to be tried in accordance with the rules of procedure and evidence prescribed by the 1975 regulations, and Mr. Wilson argues that this provision gives the Attorney-General an arbitrary power to discriminate against persons as to whom he has given such a certificate; but with respect I do not think that there is merit in this argument, because this power is consonant with the power expressly given to the Attorney-General by clause (3) of Article 145 which reads:

'(3) The Attorney-General shall have powers, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court, a native court or a court-martial.'

This court has dealt at length with this discretionary power of the Attorney-General in *Long bin Samat & Ors.* v. *Public Prosecutor* [1974] 2 M.L.J. 152."

So it is clear that when a person is charged under the Internal Security Act on a security offence there is no violation of Article 8 of the Constitution. Regarding the second objection, in *Public Prosecutor* v. *Soon Seng Sia Heng & 2 Ors.*[3] (Penang Criminal Trials Nos. 5, 6 and 7 of 1976) the court had ruled that promulgation under P.U. (A) 148/69 was a valid proclamation by the Yang Dipertuan Agung of the whole of the Federation as a security area although that was done under section 47 Part II of the Internal Security Act, 1960. That proclamation has not been revoked or annulled by Parliament and the whole of the Federation remains a security area.

And, furthermore, it is not for the court to enquire why the Public Prosecutor had declared an offence a security offence for that itself may involve exposing security matters in open court and doing harm to the public.

Fourthly, as far as the objection that the accused would be in double jeopardy, I see no merit in it. The accused has not been tried for any offence yet. Section 302(i) of the Criminal Procedure Code reads as follows: —

"302. (i) A person who has been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 166 or for which he might have been convicted under section 167."

Article 7 clause (2) of the Constitution reads as follows: —

"7. (2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted."

In either case, a person has to be convicted or acquitted before he could be said to be in double jeopardy. As far as this court is concerned, this is the first time the accused is being tried, and the court is at liberty to convict or acquit him according to the facts presented by the prosecution.

The facts of the case were very simple. Police Corporal Haji Mohamed bin Chu (PW2) of Mobile Patrol Unit said that on January 13, 1976 at about 12.30 p.m. he was in a radio car at the junction of Kampong Pisang and Jalan Thean Teik Road. He received instructions to proceed to 26, Lim Lean Teng Road, where there had been an armed robbery. The patrol car was driven by P.C. Ahmad bin Uda (identified). On arrival at the scene, he went in to see the owner who informed him that he had been shot. He asked him whether he could recognize the person who had shot him and he said 'yes'. Immediately he took a Chinese employee and an Indian named S. Subramaniam in the patrol car to go and look for the robber. They proceeded in the direction in which the armed robber had gone. Quek informed him that the person who carried the firearm was wearing a green shirt and a red safety helmet. The witness proceeded towards Ayer Itam and Kampar Road junction. On arrival at the junction both these persons pointed out a Chinese person, who was walking wearing a green

shirt and carrying a red helmet, as the one who had committed the robbery. He and the driver of the patrol car then proceeded towards the person and challenged him to stop and raise his hands. At first the accused ignored it but on the second challenge he put up both his hands. Witness approached the person and on searching him found a pistol tucked in his waist. He took possession of it and the person was arrested. The pistol was identified as a home-made revolver with five live bullets inside its chamber. The accused was taken to the police headquarters and a report was lodged. The Police Armourer (PW4) gave evidence that the pistol and bullets were service-able. In cross-examination this witness was not shaken and although various suggestions were put to him by counsel for the accused that this pistol was not found on the person of the accused but found subsequently the witness did not waver nor was his evidence shaken.

Prosecution witness, Insp. Ku Yahya (PW3), the investigating officer in this case, confirmed that at about 2.30 p.m. the corporal in-charge of the said patrol car, Cpl. Haji Mohamed bin Chu (PW2) handed him the accused, the firearm and five rounds of ammunition. The revolver and ammunition were identified by him.

The accused elected to make a statement from the dock. In his statement all he said was that after having alighted from a bus, as he was walking home, a few police personnel approached him, assaulted him and took him to Patani Road Police Station. Further he stated that he was asked to admit that the pistol and bullets belonged to him but had refused. He denied that they were recovered from his person.

Before coming to a conclusion on the facts of the case, counsel for the accused made further submissions. He again submitted that the accused should only be charged for armed robbery under the Penal Code, or under the Arms Act, or the Firearms (Increased Penalties) Act, one of the reasons being that the person caught with the present accused was being charged under the Firearms (Increased Penalties) Act. He further repeated his argument that as the Internal Security Act was only intended for political subversion and as there was no evidence that accused had carried on any political subversion, the prosecution must show some element of political subversion before he could be charged under the Internal Security Act.

To deal with counsel's submission that it was a dreadful prospect for two men who had committed the same type of offence to be tried by two different modes of trial, depending on the whim and fancy of the Public Prosecutor, I would only refer to what is quoted by the author in "Constitutional Law Cases From Malaysia and Singapore" (page 105) from the judgment of Das J. in *Kathi Raning Rawat* v. *State of Saurashtra*[4]: —

"In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power.... If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of powers if it is purposeful or in excess of its powers even if it is done in good faith and in either case the resulting discrimination will encounter the challenge of the Constitution and the court will strike down not the law which is good but the abuse or misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination."

Again, as was pointed out by Suffian L.P. in the case of *Long bin Samat & Ors.* v. *Public Prosecutor*[5]: —

"Anyone who is dissatisfied with the Attorney-General's decision not to prosecute, or not to go on with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not in the courts."

Sections 5 and 6 of the Essential (Security Cases) (Amendment) Regulations, 1975, clearly give the Public Prosecutor discretion to frame the charge against persons and bring them up for trial before the High Court without a preliminary enquiry and the courts are in no position to question the correctness of his decision. The courts may be able to interfere if it is shown to the courts that there has been an abuse of the powers vested in the Attorney-General. As far as this court is concerned there has neither been any allegation nor evidence of abuse to that effect. Therefore, the court can only decide on the facts of this case as to whether the charge against the accused has been proved.

On the evidence before me, after giving all due weight to the statement made by the accused from the dock, I came to the conclusion that the charges against the accused had been proved conclusively. There was no merit in counsel's submission on the law to affect the court's decision. The court therefore found the accused guilty of both charges against him.

I therefore convicted the accused on both charges and passed sentence of death.

Order accordingly.

Solicitors: *Karpal Singh & Co.*